tween the insurance companies is an unacceptable fifteen and a half years. The companies who conduct motor insurance business and accept the responsibilities and, no doubt, the profits of the business of authorised insurers under the Ordinance, should surely be able to devise an agreed scheme under which the satisfying of a third party's judgment does not have to wait upon the resolution of a dispute between the insurers concerned. And, if such a scheme is not forthcoming, their Lordships would suggest that the Ordinance be strengthened so as to obviate delay such as the third parties have suffered in this case.

Appeal allowed.

Solicitors: *Coward Chance; Linklaters & Paines.*

SINGAPORE REPORTS

KUN KAY HONG v. TAN TEO HUAT

[C.A. (Sinnathuray, Lai Kew Chai & Chua JJ.) November 30, 1984]
[Singapore – Civil Appeal No. 1 of 1984]

Practice and Procedure – Writ – Extension of validity of writ – Request by defendant's solicitors to withhold service – Delay in applying for extension of validity of writ – Whether fatal – Delay induced by or contributed to by words and conduct of defendant's solicitors – R.S.C. 1970, O.12, r.7(1) – Limitation Act (Cap. 10).

The question in this appeal is whether in the circumstances of this case there was sufficient or good reason such that the discretion to extend the validity of the writ was properly exercised.

After accepting service of the writ the defendant through his solicitors entered a conditional appearance and applied for an order that the renewal and service of the writ be set aside under O.12, r.7(1) of the Rules of the Supreme Court 1970 and for a further order that the plaintiff's action be dismissed as being statute-barred by virtue of section 6(4) of the Limitation Act (Cap. 10). The learned Deputy Registrar dismissed the defendant's application with costs. The defendant's appeal to the Judge in chambers was also dismissed with costs. The defendant appealed to the Court of Appeal.

Held, dismissing the appeal: (1) it was a sufficient reason that the solicitors for the underwriters of the defendant had requested the plaintiff's solicitors to stay their hands and withhold service of the writ. This request remained operative for 10 of the 12-month period of the validity of the writ;

(2) the delay of 5 months and 16 days in the filing of the application by the plaintiff to extend the validity of the writ was not fatal on the particular facts of the case. In all the circumstances the delay had been induced, or contributed to, by the words and conduct of the solicitors for the defendant.

Cases referred to:

(1) *Heaven* v. *Road and Rail Wagons Ltd.* [1965] 2 Q.B. 355, 361, 366.
(2) *Easy* v. *Universal Anchorage Co. Ltd.* [1974] 1 W.L.R. 899.
(3) *Re Chittenden decd.; Chittenden* v. *Doe* [1970] 1 W.L.R. 1618.

COURT OF APPEAL.

H.E. Cashin for the appellant.
Lim Kia Tong for the respondent.

Cur. Adv. Vult.

Lai Kew Chai J. (delivering the Judgment of the Court): In May last year, the learned Assistant

Registrar ordered that the validity of the Writ of Summons filed in connection with a claim for personal injuries in a motor accident be extended to November 24, 1983. After personally accepting service at the High Court, the Defendant through his solicitors, Messrs. Ng Kian Fong & Company, entered a conditional appearance and applied for an order that the renewal and service of the Writ of Summons be set aside under Order 12 Rule 7(1) of The Rules of The Supreme Court 1970 ("the Rules") and for a further order that the Plaintiff's action against the Defendant be dismissed as being statute-barred by virtue of section 6(4) of The Limitation Act (Cap. 10).

On October 7, 1983 the learned Deputy Registrar dismissed the Defendant's application with costs. Being dissatisfied with the said order, the Defendant appealed to the learned Judge in chambers who on January 17, 1984 dismissed the appeal with costs. Against the decision of the learned Judge, this appeal was brought before us. At the conclusion of the hearing of the appeal, we dismissed the appeal but made no order as to costs. We now give our reasons.

The accident took place some 6 years ago. It is averred in the Statement of Claim that on November 26, 1978 the Plaintiff, who was riding a motor cycle and negotiating Newton Circus, was collided into from his left by a car driven by the Defendant who was entering Newton Circus from Dunearn Road, Singapore. As a result of the accident the Plaintiff sustained a 1 cm. laceration at the left supraorbital ridge, multiple abrasions and a closed fracture of the left femur. The fracture required open Kunstcher nailing of the left femur.

The solicitors of the Plaintiff filed the Writ of Summons on November 25, 1981 which was the last day of the three year limitation period. They informed the Defendant's underwriters of the issue of the writ. On December 8, 1981 the solicitors for the Plaintiff obtained an appointment from the Registry of the High Court to effect service of the writ on January 2, 1982. On December 16, 1981 the solicitors for the underwriters of the Defendant, Messrs. Ng Kian Fong & Company, wrote to the Plaintiff's solicitors for copies of the documents to enable them to investigate the accident. On December 29, 1981 the Plaintiff's solicitors supplied copies of the documents.

On December 30, 1981 Mr. Ng Kian Fong of the solicitors of the Defendant's underwriters personally telephoned Mr. Lim Kia Tong of the Plaintiff's solicitors and requested that service of the writ be suspended pending their investigations. Mr. Lim Kia Tong, who then had just over a year's standing at the Bar, said that he readily agreed out of respect, seeing that the request had come personally from a senior member of the Bar. In consequence, the date for service was vacated. In fact, on the same day, Mr. Ng Kian Fong had also written a "Without Prejudice" letter to Mr. Lim in which he asked for the amount which the Plaintiff would accept by way of settlement out of court and in which he suggested, after noting the writ was not served, that Mr. Lim "withhold further action in this matter pending the completion of our investigations in this matter".

Throughout the following eight months, the matter did not see any progress. According to Mr. Lim, he was waiting for the outcome of the investigations of the solicitors of the Defendant. Mr. Ng Kian Fong frankly admitted to the learned Judge that he had forgotten about the matter. On September 18, 1982 the Plaintiff's solicitors wrote and asked the Defendant's solicitors whether they had instructions to accept service, indicating that the defence could be filed out of time pending negotiations. Two days later, the Plaintiff's solicitors again obtained an appointment to serve the writ on the Defendant at the address recorded in the police report of the accident. The earliest date obtained for the appointment to effect service was October 25, 1982. On September 24, 1982 Messrs Ng Kian Fong & Company replied and indicated that they were still in the process of investigations and again requested the Plaintiff's solicitors to "stay (their) hands" until the same was completed. It was clear that once again, the solicitors for the Defendant requested the Plaintiff's solicitors not to effect service of the writ.

A few days later, Mr. Lim Kia Tong telephoned Mr. Chang, a legal assistant in Messrs. Ng Kian Fong & Company, to enquire the whereabouts of the Defendant and was told that the Defendant had moved from the address recorded in the police report. Mr. Lim Kia Tong immediately wrote to the National Registration Office and was given a new address. A new appointment was made to serve the writ at the new address on November 1, 1982 but service was unsuccessful.

On October 12, 1982 Messrs Ng Kian Fong & Company wrote "without prejudice" to the Plaintiff's solicitors asking for the amount which the Plaintiff would accept by way of settlement out of Court. The Plaintiff's solicitors did not indicate

the amount. It has to be observed that by this time, it was almost inevitable that the Plaintiff could not have effected service of the writ within the twelve month period of validity of the writ, seeing that time had to be provided to make appointments for service of the writ and that the Defendant had moved.

Instead of immediately making an application to extend the validity of the writ, the Plaintiff's solicitors waited a few months and on April 25, 1983 wrote to Messrs Ng Kian Fong & Company asking if they had instructions to accept service of the writ on behalf of the Defendant. Mr. Lim Kia Tong explained the delay by pointing out that he was a relatively junior at the Bar and that it was "partly due to (their) hope that it would be amicably settled as there were indications of this nature as reflected in the (correspondence)."

Since Messrs. Ng Kian Fong & Company did not indicate that they would accept service of the writ, the Plaintiff on May 12, 1983 filed the application to extend the validity of the Writ of Summons to November 24, 1983. The application was filed some 5 months and 16 days after the expiry of the validity of the Writ of Summons. As we had stated earlier, the learned Assistant Registrar ordered the extension of the validity of the writ and his decision was affirmed by the learned Judge.

For the purpose of service, as is well known, a writ is valid in the first instance for twelve months. The Rules of Supreme Court 1970, Order 6 rule 7 (2) provides:–

"Where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from time to time for such period, not exceeding 12 months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the Court before that day or such later day (if any) as the Court may allow."

Counsel for the Defendant in the appeal before us relied on the general rule or principle that, in the absence of sufficient or good reason, the Court will not exercise its discretion in favour of the renewal of the writ after the period allowed for service has expired, if the effect of doing so will be to deprive a defendant of the benefit of a limitation period which has accrued: *per*, Megaw, J., in *Heaven* v. *Road and Rail Wagons Ltd*[1].

The question is whether in the circumstances of this case there was a sufficient or good reason such that the discretion of the learned Assistant Registrar to extend the validity of the writ was properly exercised. In considering this question, we have to point out that there is a distinction between mere negotiations on the one hand and the situation in which a defendant or his representative has stated that there is no need to serve the writ pending negotiations for a settlement. The mere fact that negotiations for a settlement were in progress has been held as not amounting to a good reason to extend the validity of a writ: see *Easy* v. *Universal Anchorage Co. Ltd*[2]. On the other hand, it has been held that it was a sufficient reason that the Defendant's insurers have stated that there was no need to serve the writ pending negotiations for a settlement. The ground for the distinction was set out in *Re Chittenden decd. Chittenden* v. *Doe* [3] by Ungoed Thomas J. at page 1624 in the following terms:–

"It seems to me quite immaterial whether the delay resulted from the Defendant asking the Plaintiff to withhold service or from his agreeing with the Plaintiff that service should be withheld. In each case, the Defendant was party to service being withheld and without his being party to the delay the originating process was liable to be duly served. The purpose of refusing to exercise the discretion in the Plaintiff's favour, on the ground that otherwise the Defendant would have the benefit of the Statute of Limitation, is, of course, to ensure that benefit to the Defendant. So if he is a party to the withholding of service of the originating process – whether by asking or agreeing to it or otherwise – it seems to me that, to the extent to which the withholding to which he is a party overruns the period of statutory limitation, the Court should not be concerned in the exercise of its discretion to ensure to him the advantage of that statutory limitation. To do otherwise seems to me plainly unjust."

After hearing the arguments, we were satisfied that there was a sufficient or good reason. It was a sufficient reason that the solicitors for the underwriters of the Defendant had requested the Plaintiff's solicitors to stay their hands and withhold service of the writ. This request remained operative for ten of the 12 month period of the validity of the writ. Even as late as mid October 1982, the Defendant was still asking for the amount acceptable to the Plaintiff. The Defendant's solicitors had requested withholding of service "pending completion" of their investigations. At no time did they tell the Plaintiff that they had completed their investigations.

In the course of arguments, we were somewhat anxious over the delay in the filing of the application which was made some 5 months and 16 days after the expiry of the validity of the writ. In most cases, this delay would have been fatal. We cannot

over-emphasise that it is the duty of a plaintiff who issues a writ to serve it promptly. We examined the reasons given by Mr. Lim Kia Tong for the delay. On the particular facts before us, we came to the conclusion that the delay was not fatal. We were satisfied in all the circumstances that the delay has been induced, or contributed to, by the words and conduct of the solicitors for the Defendant.

Appeal dismissed.

Solicitors: *Murphy & Dunbar; Thomas Tham & Partners.*

RAMU ANNADAVASCAN & ANOR. v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Thean & Chua JJ.) January 29, 1985]
[Singapore – Criminal Appeal No. 8 of 1984]

Criminal Law & Procedure – Murder – Common intention – 2nd appellant inflicted fatal blow and poured petrol on deceased – Evidence – Penal Code (Cap. 103), ss. 302 & 304 – Criminal Procedure Code (Cap. 113), s.121(6).

Penal Code, ss. 34 & 302 – Murder – Common intention.

The appellant were convicted of murder under section 302 read with section 34 of the Penal Code and was sentenced to death. The learned trial judge found it was the 2nd appellant who inflicted the fatal blow on the deceased's head, and that there was a common intention of both the appellants to cause injuries to the deceased which in the ordinary course of nature would cause death. There was evidence that the deceased was still alive when the 2nd appellant poured petrol on the deceased and the 1st appellant set fire to the deceased.

Held, dismissing the appeal (1) at the time or immediately before the fatal blow was inflicted on the deceased the appellants had the common intention.

(2) so far as the 2nd appellant is concerned, the absence of a common intention was immaterial as he inflicted the injuries which caused the death of the deceased.

COURT OF CRIMINAL APPEAL.

Subhas Anandan for the 1st appellant.
R. Pala Krishnan for the 2nd appellant.
Spencer Gwee (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Thean J. (delivering the Judgment of the Court): The Appellants were convicted of the following offence, namely:

"That you between 1.30 p.m. on the September 20, 1981 and 9.25 a.m. on the September 25, 1981 at East Coast Parkway, 5 kilometres, Singapore, in furtherance of the common intention of you both, committed murder by causing the death of one, Kalingam s/o Mariappan, and you have thereby committed an offence punishable under section 302 read with section 34 of the Penal Code (Chapter 103)."

The facts as proved before the learned trial judges are these. On September 20, 1981 at about 12 o'clock noon the first and second Appellants went to a coffee stall at a Hawkers' Centre. There they met the late Kalingam s/o Mariappan (the "deceased") whom they both knew. The 1st Appellant had known the deceased for a number of years but there was bad blood between them, and they had frequent quarrels and fights. The Appellants had a conversation with the deceased and together they had some drinks; the Appellants each had a beer and the deceased had a stout. After that the Appellants invited the deceased to go with them to Changi Airport for some drinks. At first the deceased refused but later he was persuaded to go along. The 1st Appellant drove his uncle's lorry, No. Y5505 with the deceased seated beside him and the 2nd Appellant at the back. On the way there the 1st Appellant had a quarrel with the deceased and the 1st Appellant drove the lorry to a side track at East Coast Parkway and stopped the lorry. All three of them alighted from the lorry. The 1st Appellant took a rake which was in the lorry and hit the deceased on the head with it. The deceased fell, got up and ran. The 1st Appellant tried to stop him but failed. He called upon the 2nd Appellant to catch the deceased which the 2nd Appellant did. The 1st Appellant then went up to the deceased, caught hold of him and dragged him along for a short distance. He gave the rake to the 2nd Appellant and the 2nd Appellant then hit the deceased twice on the head with the rake. The blows landed on his nose and he fell. The 1st Appellant then placed his foot on the deceased's chest and asked the 2nd Appellant to bring some petrol from the lorry. The 2nd Appellant brought the petrol, poured it over the deceased's body and the 1st Appellant then lighted a match and set fire to the deceased, who got up and ran around howling in pain. They then left the deceased.

Before the learned trial judges there was adduced expert evidence from Professor Chao Tzee Cheng, the Senior Forensic Pathologist, who performed an autopsy on the deceased. He reported that there were 3 serious fractures in the skull of the deceased: (1) a hairline cracked fracture of 3 cm. on the right frontal bone, (2) a depressed fracture 2.5 cm. on the right parietal bone and (3) a cracked fracture 3 cm. on the right parietal bone at